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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,155	07/27/2000	John Tauber	P7240.0001/P076	9856

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/627,155

Applicant(s)

TAUBER, JOHN

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a contour of said inner surface of said first top wall within said lugs and a contour of said second top wall within said recesses do not substantially interfere with each other until engagement between said lugs and recesses" must be shown or the feature(s) canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a contour of said inner surface of said first top wall within said lugs and a contour of said second top wall within said recesses do not substantially interfere with each other until engagement between said lugs and recesses" (in claims 1,8, and 15), an alignment of said first top wall with respect to said second top wall remains constant" (in claim 23), and "said first top wall remains substantially undeformed" (in claim 25).

Claim Rejections - 35 USC § 112

3. Claims 23-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure, as filed, for "a contour of said inner

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surface of said first top wall within said lugs and a contour of said second top wall within said recesses do not substantially interfere with each other until engagement between said lugs and recesses" (in claims 1,8, and15), "an alignment of said first top wall with respect to said second top wall remains constant" (in claim 23) and "said first top wall remains substantially undeformed" (in claim 25).

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

It is unclear what is intended by "a contour of said inner surface of said first top wall within said lugs and a contour of said second top wall within said recesses do not substantially interfere with each other until engagement between said lugs and recesses" (in claims 1,8, and15) since no contour of the first top wall or the second top wall have been set forth in the specification. Moreover, it is unclear how the first top wall has a contour is within the lugs and the second top wall has a contour within the recesses.

It is unclear what is intended by "do not substantially interfere with" since the phrase is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Does this mean they do not engage at all or that they merely engage a to small degree?

In claim 15 the last paragraph appears to contradict the third paragraph which sets for the "lugs slide up said inclined walls... and a force urging said outer cap towards said inner cap is not being applied".

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-3,6,8-13,15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky (US 3,853,236).

Ostrowsky teaches the claimed closure having radially disposed lugs on an outer cap (figs. 2,4, and 5) and recesses on an inner cap, said recesses each formed by a vertical wall and an inclined wall. The lugs of the outer cap engage the recesses of the inner cap in a closure application direction and slide up the inclined walls in a closure opening direction when a force urging the outer cap towards the inner cap is not being applied. See column 2, lines 52-64 regarding the inclination of the recess walls (40,38 and the lower portion of 34).

It can be seen in figure 7, for example, that there is inherently some degree of freedom of movement between the inner and outer caps.

7. Claims 1-4,6-17,20,23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Minette (US 5,147,052).

See figures 2 and 3 and the description at column 3, lines 10-30.

Claim Rejections - 35 USC § 103

8. Claims 4,5 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky.

Ostrowsky discloses the claimed invention except for the lugs and recesses numbering at least twelve and/or the lugs and recesses numbering twenty-four.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least twelve and more specifically twenty-four lugs and

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recesses, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

9. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Friedenthal (US 5,147,053).

Ostrowsky teaches the claimed closure except for the first top cap containing a beveled edge.

Friedenthal teaches a closure having a beveled edge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a beveled edge as taught by Friedenthal to the first top cap of Ostrowsky. Doing so would provide a cap edge which would allow for more comfortable actuation of the first cap toward the second cap.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Buono (US 5,197,616).

Ostrowsky teaches the claimed closure except for indicia on an outer surface of the first top wall.

Buono teaches a closure having indicia on an outer surface of the first top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply indicia on an outer surface of the first top wall as taught by Buono to the closure of Ostrowsky. Doing so would provide operating instructions for the user of the closure.

11. Claims 5, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minette.

Minette discloses the claimed invention except for the lugs and recesses numbering at least twelve and/or the lugs and recesses numbering twenty-four.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide twenty-four lugs and recesses, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Arguments

12. Applicant's arguments filed June 13, 2003 have been fully considered but they are not persuasive.

Regarding applicant's remarks of the teaching of Ostrowsky, to the degree applicant has set forth the claimed invention as previously pointed out in the rejections under 35 USC 112, 1st and 2nd paragraphs, Ostrowsky anticipates the claims for the following reasons.

First, it is unclear what is intended by a contour of said inner surface of said first top wall within said lugs and a contour of said second top wall within said recesses do not substantially interfere with each other until engagement between said lugs and recesses" since the contour of the inner surface of the first top wall and the contour of the second top wall have not been set forth in the specification.

Second, it is unclear what is meant by the phrase "substantially interfere". As set forth, the first top wall and the second top wall have not defined contour, or outline. Additionally, there is not structure set forth as providing the walls with contour.

Lastly, the outline of the first top wall and the second top wall of Ostrowsky do not "substantially interfere" with each other, only the lugs and recesses slidably engage. The lugs are not set forth as being part of the contour of the first top wall or the recess as part of the contour of the second top wall.

For at least these reasons, the rejection is maintained and repeated above.

13. Applicant's arguments with respect to claims 1-20, 23-26 have been considered but are moot in view of the new ground(s) of rejection in view of Minette.

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Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

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Typed or printed name of person signing this certificate

Signature_____

Date_____


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
September 3, 2003


Robin A. Hylton
Primary Examiner
GAU 3727